

PETITION FOR REHEARING

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United States Court of Appeals

NINTH CIRCUIT

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NO. 20514

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FILED  
OCT 11 1966  
WM. B. LUCK, CLERK

CHARLES MULRY, LEONARD POLONSKY,  
IRVIN FISHMAN, LAWRENCE LEE,  
CARMEN YUPPA and ROBERT BARRETT,

Appellants,

vs.

WILLIAM DRIVER, Administrator of the  
Veterans Administration, et al.,

Appellees.

Appeal from the United States District Court,  
Southern District of California, Central  
Division

*Petition for Rehearing*

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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PETITION FOR REHEARING

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The Appellants above-named respectfully petition this Honorable Court for a rehearing of the appeal in the above-entitled cause, and in support of this petition, represent to the Court as follows:



1. By reason of the ruling of the trial court that it lacked jurisdiction of this action, Appellants were denied an opportunity to offer evidence as to the substantive issues. Because of the absence of evidence, there has been a clear misapprehension of crucial facts by your Court.

Thus, in the printed opinion, this Court takes judicial notice, in effect, of a condition which does not exist. The opinion states that:

"(3) If a doctor resident is away at some other hospital in the midst of performing an appendectomy upon a private patient, he is not available for immediate attention to a critical case in the Veterans Hospital." (p. 9)

If evidence had been received, it would have been proved that this could not happen. The hospital administration has approved an O.D. Rotation Roster, so that each night only three resident physicians (out of approximately 110), plus one alternate and one staff physician, are required to staff the hospital and furnish around the clock care for patients from 4:30 p.m. to 8:00 a.m.



This procedure, approved by the Veterans Administration, negates the assumption that there is a rational basis for the regulation. The current practice at the hospital is inconsistent with the regulation.

2. The Court's opinion indicates that Appellants are not in training status (p. 6), but additional clarification is necessary. Appellants alleged that they were appointed pursuant to Title 38, U.S.C., Section 4114 (T. p. 3, l. 30). Said section authorizes the Administrator to employ residents on a temporary full-time or part-time basis [4114(a)(1)(A)]. It also authorizes him to establish (permanent?) residencies [4114(b)], and to establish the terms of pay.

Is there a distinction between residencies established under Section 4114(a)(1)(A) and those under Section 4114(b) with respect to being in training status?

3. The Court's opinion (footnote 5, p. 5) indicates that Appellants may be entitled to the Statutory pay scales set forth in Section 4107, Title 38, U.S.C., ignoring the declaration of that section to the effect that

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF CHEMISTRY  
5700 S. DICKINSON AVE.  
CHICAGO, ILL. 60637

TO THE EDITOR:

I am writing to you to inform you of the results of our recent work on the synthesis of new polymers. We have found that the reaction of monomer A with monomer B under conditions of high temperature and pressure yields a polymer with a molecular weight of approximately 10,000. This polymer is soluble in a wide range of solvents and has a glass transition temperature of about 150°C. We are currently working on the synthesis of other polymers and will be pleased to share our results with you.

Sincerely,  
[Signature]

Yours faithfully,  
[Signature]

Enclosed for you are two copies of the manuscript of our paper on the synthesis of new polymers. We would be pleased to have your comments on the manuscript.

Very truly yours,  
[Signature]

Enclosed for you are two copies of the manuscript of our paper on the synthesis of new polymers. We would be pleased to have your comments on the manuscript.



these scales are applicable only to appointments under Section 4103.

4. Before this appeal may properly be disposed of, Appellants urge this Court to determine whether they are entitled to the coverage of Sections 911 to 922 and 944 of Title 5, U.S.C. If, in fact, they are excluded from such coverage, have Appellants been deprived of constitutional rights as alleged in the Complaint? (T. p. 7, l. 30 - p. 8, l. 5.) Appellants sought declaratory relief as to this issue (T. p. 11, ll. 5 - 13), but the question remains undetermined. Appellants urge this Court to decide the issue or to remand the case with appropriate direction.

For the foregoing reasons, this petition for rehearing should be granted.

Respectfully submitted,

ABRAHAM GORENFELD

Attorney for Appellants



CERTIFICATE OF COUNSEL

STATE OF CALIFORNIA                    )  
  ) ss.  
County of Los Angeles                )

ABRAHAM GORENFELD, being first duly sworn, on oath,  
certifies and says:

That he is attorney for the Appellants in this cause;  
that he makes this Certificate in compliance with Rule 23  
of the Rules of this Court; that in his judgment, the within  
and foregoing petition for rehearing is well founded and is  
not interposed for delay.

---

ABRAHAM GORENFELD

Subscribed and sworn to before me  
this        day of October, 1966.

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Notary Public in and for  
the State of California.

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                                      )  
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I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, over the age of eighteen and not a party to the within action or proceeding; that

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Civil Division  
U. S. Department of Justice  
Washington, D. C. 20530  
Attention: M. Hollander, Chief  
Appellate Section

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October           , 1966, at Los Angeles, California.

\_\_\_\_\_  
D. A. Standefer

Subscribed and sworn to before me  
this           day of October, 1966.

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